

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-949-MMM (SP)	Date	February 13, 2014
Title	JAMILLION BROWN v. PEOPLE OF THE STATE OF CALIFORNIA		

Present: The Honorable	Sheri Pym, United States Magistrate Judge
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Kimberly I. Carter	n/a	n/a
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Deputy Clerk	Court Reporter / Recorder	Tape No.
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Attorneys Present for Petitioner:

Attorneys Present for Respondent:

n/a

n/a

Proceedings: (In Chambers) Order to Show Cause Why Petition Should Not Be Dismissed for Failure to File Proper Petition and Name Proper Respondent

On February 6, 2014, petitioner initiated this federal action by filing two documents: (1) Petitioner's Traverse to Petition for Writ of Habeas Corpus; and (2) Memorandum of Points and Authorities in Support of Traverse. Although these documents, together, are written as and purport to be a "traverse," or reply, to a return to a petition, because they are the only documents filed in this case, the court has treated the traverse as if it is a petition for writ of habeas corpus by a person in state custody under 28 U.S.C. § 2254. As a "petition," the traverse suffers from a number of defects.

First, and most obviously, the traverse is not a proper petition. It refers to a petition and other documents that are not in the record before this court, and as such it is difficult to understand. Indeed, it is difficult to be certain of petitioner's precise claims. As a most basic matter, petitioner did not file the petition on the form approved by the court – that is, form CV-69 – as required by Local Rule 83-16.1.

In addition, petitioner failed to name a proper respondent. A habeas petition filed pursuant to 28 U.S.C. § 2254 by a petitioner who is currently in custody under a state court judgment must name as respondent the state officer who has custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2004); 28 U.S.C. § 2242; Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts ("If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody."). Thus, "[t]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held" *Rumsfeld*, 542 U.S. at 435; *accord*

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Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (*as amended* May 18, 1994) (the proper respondent to the habeas petition is “typically . . . the warden of the facility in which the petitioner is incarcerated”). The Ninth Circuit has held that the “[f]ailure to name the correct respondent destroys personal jurisdiction.” *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (*as amended* May 8, 1996); *see also Stanley*, 21 F.3d at 360. Although it appears that petitioner is currently incarcerated at Kern Valley State Prison, he does not name the warden of that institution as the respondent. Rather, petitioner has named People of the State of California as respondent.

Accordingly, the court hereby issues an **ORDER TO SHOW CAUSE** why the petition should not be dismissed for failure to file a proper petition on form CV-69 and to name a proper respondent. Petitioner is **ordered** to file with the court a written response to the Order to Show Cause on or before **March 17, 2014**.

Petitioner may discharge this Order to Show Cause by filing with this court, on or before March 17, 2014, a **First Amended Petition** using form CV-69 and naming a proper respondent. The First Amended Petition will supersede the documents already filed and must be complete in and of itself. The court clerk is directed to send petitioner the State Habeas Corpus Packet containing form CV-69 with this minute order.

The court warns petitioner that failure to timely file a First Amended Petition or other response as directed in this Order will result in a recommendation that this action be dismissed without prejudice for failure to file a proper petition, for failure to name a proper respondent, for failure to prosecute, and/or for failure to obey court orders.



TERRY NAFISI
District Court Executive and
Clerk of Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-7984

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

Dear Sir/Madam:

The following documents are enclosed:

1. Petition for Writ of Habeas Corpus by a Person in:
 - ☐ Federal Custody (Form CV-27) (four copies) along with one copy of Title 28 U.S. Code Sections 2241 and 2242
 - ☒ State Custody (Form CV-69) (four copies) along with one copy of Title 28 U.S. Code Sections 2244(d), 2254 and Rules Governing Section 2254 Cases; and Consent to Proceed Before a United States Magistrate Judge (State Habeas Case) (Form CV-11B) (two copies) along with one copy of Title 28 U.S. Code Section 636
2. Local Rules 72-3, and 83-16

The judges of this court have adopted for use the enclosed *Petition for Writ of Habeas Corpus* form. You must read the instructions carefully, and comply with its requirements and instructions. Once fully completed, return an original and two copies to this office for filing. You should keep a copy for your records.

The filing fee for a Petition for Habeas Corpus is \$5.00, payable to: Clerk, U.S. District Court. The Clerk's Office will also accept credit cards (Mastercard, Visa, Diners Club, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.

If you are without funds, execute the *Declaration to Proceed in Forma Pauperis* contained within the form. In addition to the declaration, an authorized officer of the institution must complete the Certificate contained in the *Declaration to Proceed in Forma Pauperis* as to how much money the institution has on deposit in your account.

CONSENT TO A MAGISTRATE JUDGE (STATE HABEAS CASES ONLY)

In order to encourage the just, speedy, and inexpensive determination of habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. In accordance with 28 U.S.C. § 636 (c), upon the consent of all the parties to such jurisdiction, the magistrate judge assigned to this case will conduct all proceedings, decide all dispositive and non-dispositive matters, and order the entry of the final judgment. The party who does not prevail may appeal directly to the Ninth Circuit Court of Appeals in the same manner as an appeal from the final judgment of a district judge.

The judges of this court encourage the parties to consent to magistrate judge jurisdiction as it may result in an earlier resolution of the matter. However, you are free to withhold consent to magistrate judge jurisdiction. If you do not consent, the assigned magistrate judge will continue to decide all non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

If you do consent to magistrate judge jurisdiction, you should execute and return the enclosed Consent to Proceed Before a United States Magistrate Judge (State Habeas Case) form (CV-11B) with your petition.

Sincerely,
Clerk, U. S. District Court

By _____
Deputy Clerk

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR PARTY, OR NAME,
ADDRESS & INMATE ID # OF PETITIONER IF PETITIONER IS PRO PER

ATTORNEYS FOR:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

v.

Petitioner,

Respondent.

**CONSENT TO PROCEED BEFORE A UNITED STATES
MAGISTRATE JUDGE
(STATE /FEDERAL HABEAS CASE)**

I NOTICE OF A MAGISTRATE JUDGE'S AVAILABILITY

1. A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge can be assigned to rule on dispositive matters only if all parties voluntarily consent.
2. You are free to withhold consent to magistrate judge jurisdiction.
3. If both parties consent to have a magistrate judge decide the case, either party may appeal directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
4. If both parties do not consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide all non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

II CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

Name of Counsel **OR** Party if Pro Per

Signature and date

Counsel for (Name Party)

III NOTICE TO COUNSEL FROM CLERK

All parties having consented to proceed before the assigned magistrate judge, please specify the case number as _____ on all documents subsequently filed in this case.

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR PARTY, OR NAME,
ADDRESS & INMATE ID # OF PETITIONER IF PETITIONER IS PRO PER

ATTORNEYS FOR:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

v.

Petitioner,

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(STATE /FEDERAL HABEAS CASE)**

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2. You are free to withhold consent to magistrate judge jurisdiction.
3. If both parties consent to have a magistrate judge decide the case, either party may appeal directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
4. If both parties do not consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide all non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

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I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

Name of Counsel **OR** Party if Pro Per

Signature and date

Counsel for (Name Party)

III NOTICE TO COUNSEL FROM CLERK

All parties having consented to proceed before the assigned magistrate judge, please specify the case number as _____ on all documents subsequently filed in this case.

**UNITED STATES CODE SECTIONS
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TITLE 28 UNITED STATES CODE

§ 636. JURISDICTION, POWERS, AND TEMPORARY ASSIGNMENT

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law--

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)(1) Notwithstanding any provision of law to the contrary--

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [FN1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court

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shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary--

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a

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limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) Contempt authority.--

(1) In general.--A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2) Summary criminal contempt authority.--A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3) Additional criminal contempt authority in civil consent and misdemeanor cases.--In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4) Civil contempt authority in civil consent and misdemeanor cases.--In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) Criminal contempt penalties.--The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) Certification of other contempts to the district court.--Upon the commission of any such act--

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(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where--

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) Appeals of magistrate judge contempt orders.--The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate judge may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate judge shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying

(1) the emergency by reason of which he has been transferred,

(2) the duration of his assignment, and

(3) the duties which he is authorized to perform. A magistrate judge so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate judge may perform the verification function required by section 4107 of title 18, United States Code. A magistrate judge may be assigned by a judge of any United States

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district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate judge assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate judge who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate judge. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate judge, shall not apply to the recall of a retired magistrate judge under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate judge under this subsection or section 375 of this title unless such retired magistrate judge met such requirement upon appointment or reappointment as a magistrate judge under section 361.

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§ 2244. FINALITY OF DETERMINATION

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

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§ 2254. STATE CUSTODY; REMEDIES IN FEDERAL COURTS

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court

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proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

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RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS

Rule 1. Scope

(a) ***Cases Involving a Petition under 28 U.S.C. § 2254.*** These rules govern a petition for a writ of habeas corpus filed in a United States district court under 28 U.S.C § 2254 by:

(1) by a person in custody under a state-court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States; and

(2) a person in custody under a state-court or federal-court judgment who seeks a determination that future custody under a state-court judgment would violate the Constitution, laws, or treaties of the United States.

(b) ***Other Cases.*** The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).

Rule 2. The Petition

(a) ***Current Custody; Naming the Respondent.*** If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.

(b) ***Future Custody; Naming the Respondents and Specifying the Judgment..*** If the petitioner is not yet in custody — but may be subject to future custody — under the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgment was entered. The petition must ask for relief from the state-court judgment being contested.

(c) ***Form.*** The petition must:

- (1) specify all the grounds for relief available to the petitioner;
- (2) state the facts supporting each ground;
- (3) state the relief requested;
- (4) be printed, typewritten, or legibly handwritten; and,
- (5) be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

(d) ***Standard Form.*** The petition must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to petitioners without charge.

(e) ***Separate Petitions for Judgments of Separate Courts.*** A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.

Rule 3. Filing the Petition; Inmate Filing

(a) ***Where to File: Copies; Filing Fee..*** An original and two copies of the petition must be filed with the clerk and must be accompanied by:

- (1) the applicable filing fee, or
- (2) a motion for leave to proceed in forma pauperis, the affidavit required by 28 U.S.C. § 1915, and a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution.

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(b) **Filing.** The clerk must file the petition and enter it on the docket.

(c) **Time to File.** The time for filing a petition is governed by 28 U.S.C. § 2244(d).

(d) **Inmate Filing.** A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day of filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

Rule 4. Preliminary Review; Serving the Petition and Order

The clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. In every case, the clerk must serve a copy of the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved.

Rule 5. The Answer and the Reply

(a) **When Required.** The respondent is not required to answer the petition unless a judge so orders.

(b) **Contents: Addressing the Allegations; Stating a Bar.** The answer must address the allegations in the petition. In addition, it must state whether any claim in the petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.

(c) **Contents: Transcripts.** The answer must also indicate what transcripts (of pretrial, trial, sentencing, or post-conviction proceedings) are available, when they can be furnished, and what proceedings have been recorded but not transcribed. The respondent must attach to the answer parts of the transcript that the respondent considers relevant. The judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed and furnished. If a transcript cannot be obtained, the respondent may submit a narrative summary of the evidence.

(d) **Contents: Briefs on Appeal and Opinions.** The respondent must also file with the answer a copy of:

(1) any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;

(2) any brief that the prosecution submitted in an appellate court relating to the conviction or sentence; and

(3) the opinions and dispositive orders of the appellate court relating to the conviction or the sentence.

(e) **Reply.** The petitioner may submit a reply to the respondent's answer or other pleading within a time fixed by the judge.

Rule 6. Discovery

(a) **Leave of Court Required.** A judge may, for good cause, authorize a party to

**UNITED STATES CODE SECTIONS
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery. If necessary for effective discovery, the judge must appoint an attorney for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A.

(b) ***Requesting Discovery.*** A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.

(c) ***Deposition Expenses.*** If the respondent is granted leave to take the deposition, the judge may require the respondent to pay the travel expenses, subsistence expenses, and fees of the petitioner's attorney to attend the deposition.

Rule 7. Expansion of Record

(a) ***In General.*** If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated.

(b) ***Types of Materials.*** The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record.

(c) ***Review by the Opposing Party.*** The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

Rule 8. Evidentiary Hearing

(a) ***Determining Whether to Hold a Hearing.*** If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.

(b) ***Reference to a Magistrate Judge.*** A judge may, under 28 U.S.C. § 636(b), refer the petition to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

(c) ***Appointing Counsel; Time of Hearing.*** If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.

Rule 9. Second or Successive Petitions

Before presenting a *second or successive* petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4).

Rule 10. Powers of a Magistrate Judge

A magistrate judge may perform the duties of a district judge under these rules, as authorized under 28 U.S.C. § 636.

**UNITED STATES CODE SECTIONS
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Rule 11. Certificate of Appealability; Time to Appeal

(a) ***Certificate of Appealability.*** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) ***Time to Appeal.*** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Rule 12. Applicability of the Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.

**LOCAL RULES
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOCAL RULE 83-16 HABEAS CORPUS PETITIONS AND MOTIONS UNDER 28 U.S.C. SECTION 2255

83-16.1 COURT FORMS - A petition for a writ of habeas corpus or a motion filed pursuant to 28 U.S.C. Section 2255 shall be submitted on the forms approved and supplied by the Court.

83-16.2 VERIFICATION - OTHER THAN PERSON IN CUSTODY - If the petition or motion is verified by a person other than the individual in custody, the person verifying the document shall set forth the reason why it has not been verified by the person in custody. The person verifying the document shall allege only facts personally known to that person. If facts are alleged upon information and belief, the source of the information and belief shall be stated.

83-16.3 HABEAS CORPUS - EXCLUSION, DEPORTATION AND REMOVAL CASES - A next friend petition for a writ of habeas corpus in exclusion, deportation and removal cases must allege that the petitioner has been authorized by the applicant for admission or respondent in the proceedings to file the petition. If the petition is filed by a relative who is the father, mother, husband, wife, brother, sister, uncle or aunt of the applicant for admission in the proceedings, that fact shall be alleged and authorization to file the petition need not be shown.

**LOCAL RULES
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOCAL RULE 72-3 DISPOSITIVE MOTIONS AND PRISONER PETITIONS

72-3.1 DUTIES OF MAGISTRATE JUDGE - Upon the assignment of a case covered by F.R.Civ.P. 72, the Magistrate Judge shall conduct all necessary proceedings. Pursuant to Rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts, the duties imposed upon a Judge of the District Court may be performed by a full-time Magistrate Judge (except in death penalty cases).

72-3.2 SUMMARY DISMISSAL OF HABEAS CORPUS PETITION - The Magistrate Judge promptly shall examine a petition for writ of habeas corpus, and if it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief, the Magistrate Judge may prepare a proposed order for summary dismissal and submit it and a proposed judgment to the District Judge.

72-3.3 REPORT BY MAGISTRATE JUDGE - In habeas cases that are not summarily dismissed, and in all other matters covered by F.R.Civ.P. 72(b) that the Magistrate Judge determines can be resolved without trial, the Magistrate Judge shall file a report which may contain proposed findings of fact, conclusions of law and recommendations for disposition. If the Magistrate Judge concludes that a trial by a District Judge is required, the Magistrate Judge shall so report to the District Judge.

72-3.4 OBJECTIONS TO REPORT WHERE PARTY IN CUSTODY - If a party is in custody at the time of the filing of the Magistrate Judge's report, the time for filing objections allowed under F.R.Civ.P. 72(b) shall be twenty (20) days or such further time as the Magistrate Judge may order.

72-3.5 DETERMINATION OF OBJECTIONS BY DISTRICT JUDGE - If no objections are filed within the time allowed, the Magistrate Judge shall submit the matter to the District Judge on the basis of the original report. If objections are timely filed, the Magistrate Judge may issue a revised or supplemental report or submit the matter to the District Judge on the basis of the original report.

72-3.6 FILING OF TRANSCRIPT - If an evidentiary hearing was conducted by the Magistrate Judge, the party objecting shall obtain and file a certified transcript of the hearing or pertinent part thereof. Upon application, the Magistrate Judge may extend the time to file the transcript.

NAME _____

PRISON IDENTIFICATION/BOOKING NO. _____

ADDRESS OR PLACE OF CONFINEMENT _____

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FULL NAME (Include name under which you were convicted) _____

Petitioner,

v.

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER _____

Respondent.

CASE NUMBER:

CV _____

To be supplied by the Clerk of the United States District Court

☐ _____ AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY**

28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION _____

PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)

CV _____

CV _____

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
7. When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: *(Check appropriate number)*

This petition concerns:

1. ☐ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue

- a. Place of detention _____
- b. Place of conviction and sentence _____

2. Conviction on which the petition is based *(a separate petition must be filed for each conviction being attacked)*.

- a. Nature of offenses involved *(include all counts)* : _____

- b. Penal or other code section or sections: _____

- c. Case number: _____
- d. Date of conviction: _____
- e. Date of sentence: _____
- f. Length of sentence on each count: _____

- g. Plea *(check one)* :
☐ Not guilty
☐ Guilty
☐ Nolo contendere
- h. Kind of trial *(check one)* :
☐ Jury
☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☐ Yes ☐ No

If so, give the following information for your appeal *(and attach a copy of the Court of Appeal decision if available)*:

- a. Case number: _____
- b. Grounds raised *(list each)* :
 (1) _____
 (2) _____

- (3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☐ Yes ☐ No

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)* :

a. Case number: _____

b. Grounds raised *(list each)* :

- (1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons _____

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

c. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____
_____(7) Was an evidentiary hearing held? ☐ Yes ☐ No7. Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: _____
_____(1) Supporting FACTS: _____

_____(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ Nob. Ground two: _____
_____(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

c. Ground three: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

d. Ground four: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

e. Ground five: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: _____

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☐ No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

12. Are you presently represented by counsel? ☐ Yes ☐ No

If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

Signature of Petitioner

Petitioner

Respondent(s)

**ELECTION REGARDING
CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE**

- A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge may be assigned to rule on dispositive matters only if all parties voluntarily consent.
- Parties are free to withhold consent to magistrate judge jurisdiction without adverse substantive consequences.
- If both parties consent to have a magistrate judge decide the case, any appeal would be made directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
- Unless both parties consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide only non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

Please check the “yes” or “no” box regarding your decision to consent to a United States Magistrate Judge, and sign below.

☐ Yes, I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

☐ No, I do not consent to have a United States Magistrate Judge conduct all further proceedings in this case.

Executed on _____

Date

Signature of Petitioner/Counsel for Petitioner

Petitioner

Respondent(s)

**DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS**

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment? ☐ Yes ☐ No
- b. Rent payments, interest or dividends? ☐ Yes ☐ No
- c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No
- d. Gifts or inheritances? ☐ Yes ☐ No
- e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: _____

3. Do you own any cash, or do you have money in a checking or savings account? *(Include any funds in prison accounts)*
☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: _____

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: _____

Date Authorized Officer of Institution/Title of Officer

NAME _____

PRISON IDENTIFICATION/BOOKING NO. _____

ADDRESS OR PLACE OF CONFINEMENT _____

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FULL NAME (Include name under which you were convicted) _____

Petitioner,

v.

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER _____

Respondent.

CASE NUMBER:

CV _____

To be supplied by the Clerk of the United States District Court

☐ _____ AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY**

28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION _____

PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)

CV _____

CV _____

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
7. When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: *(Check appropriate number)*

This petition concerns:

1. ☐ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue

- a. Place of detention _____
- b. Place of conviction and sentence _____

2. Conviction on which the petition is based *(a separate petition must be filed for each conviction being attacked)*.

- a. Nature of offenses involved *(include all counts)* : _____

- b. Penal or other code section or sections: _____

- c. Case number: _____
- d. Date of conviction: _____
- e. Date of sentence: _____
- f. Length of sentence on each count: _____

- g. Plea *(check one)* :
☐ Not guilty
☐ Guilty
☐ Nolo contendere
- h. Kind of trial *(check one)* :
☐ Jury
☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☐ Yes ☐ No

If so, give the following information for your appeal *(and attach a copy of the Court of Appeal decision if available)*:

- a. Case number: _____
- b. Grounds raised *(list each)* :
 (1) _____
 (2) _____

- (3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☐ Yes ☐ No

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)* :

a. Case number: _____

b. Grounds raised *(list each)* :

- (1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons _____

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

c. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____
_____(7) Was an evidentiary hearing held? ☐ Yes ☐ No7. Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: _____
_____(1) Supporting FACTS: _____

_____(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ Nob. Ground two: _____
_____(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

c. Ground three: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

d. Ground four: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

e. Ground five: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: _____

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☐ No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

12. Are you presently represented by counsel? ☐ Yes ☐ No

If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

Signature of Petitioner

Petitioner

Respondent(s)

**ELECTION REGARDING
CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE**

- A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge may be assigned to rule on dispositive matters only if all parties voluntarily consent.
- Parties are free to withhold consent to magistrate judge jurisdiction without adverse substantive consequences.
- If both parties consent to have a magistrate judge decide the case, any appeal would be made directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
- Unless both parties consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide only non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

Please check the “yes” or “no” box regarding your decision to consent to a United States Magistrate Judge, and sign below.

☐ Yes, I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

☐ No, I do not consent to have a United States Magistrate Judge conduct all further proceedings in this case.

Executed on _____

Date

Signature of Petitioner/Counsel for Petitioner

Petitioner

Respondent(s)

**DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS**

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment? ☐ Yes ☐ No
- b. Rent payments, interest or dividends? ☐ Yes ☐ No
- c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No
- d. Gifts or inheritances? ☐ Yes ☐ No
- e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: _____

3. Do you own any cash, or do you have money in a checking or savings account? *(Include any funds in prison accounts)*
☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: _____

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: _____

Date Authorized Officer of Institution/Title of Officer

NAME _____

PRISON IDENTIFICATION/BOOKING NO. _____

ADDRESS OR PLACE OF CONFINEMENT _____

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FULL NAME (Include name under which you were convicted) _____

Petitioner,

v.

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER _____

Respondent.

CASE NUMBER:

CV _____

To be supplied by the Clerk of the United States District Court

☐ _____ AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY**

28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION _____

PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)

CV _____

CV _____

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
7. When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: *(Check appropriate number)*

This petition concerns:

1. ☐ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue

- a. Place of detention _____
- b. Place of conviction and sentence _____

2. Conviction on which the petition is based *(a separate petition must be filed for each conviction being attacked)*.

- a. Nature of offenses involved *(include all counts)* : _____

- b. Penal or other code section or sections: _____

- c. Case number: _____
- d. Date of conviction: _____
- e. Date of sentence: _____
- f. Length of sentence on each count: _____

- g. Plea *(check one)* :
☐ Not guilty
☐ Guilty
☐ Nolo contendere
- h. Kind of trial *(check one)* :
☐ Jury
☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☐ Yes ☐ No

If so, give the following information for your appeal *(and attach a copy of the Court of Appeal decision if available)*:

- a. Case number: _____
- b. Grounds raised *(list each)* :
 (1) _____
 (2) _____

- (3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☐ Yes ☐ No

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)* :

a. Case number: _____

b. Grounds raised *(list each)* :

- (1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons _____

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

c. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____
_____(7) Was an evidentiary hearing held? ☐ Yes ☐ No7. Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: _____
_____(1) Supporting FACTS: _____

_____(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ Nob. Ground two: _____
_____(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

c. Ground three: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

d. Ground four: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

e. Ground five: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: _____

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☐ No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

12. Are you presently represented by counsel? ☐ Yes ☐ No

If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

Signature of Petitioner

Petitioner

Respondent(s)

**ELECTION REGARDING
CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE**

- A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge may be assigned to rule on dispositive matters only if all parties voluntarily consent.
- Parties are free to withhold consent to magistrate judge jurisdiction without adverse substantive consequences.
- If both parties consent to have a magistrate judge decide the case, any appeal would be made directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
- Unless both parties consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide only non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

Please check the “yes” or “no” box regarding your decision to consent to a United States Magistrate Judge, and sign below.

☐ Yes, I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

☐ No, I do not consent to have a United States Magistrate Judge conduct all further proceedings in this case.

Executed on _____

Date

Signature of Petitioner/Counsel for Petitioner

Petitioner

Respondent(s)

**DECLARATION IN SUPPORT
 OF REQUEST
 TO PROCEED
 IN FORMA PAUPERIS**

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? ☐ Yes ☐ No

b. Rent payments, interest or dividends? ☐ Yes ☐ No

c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No

d. Gifts or inheritances? ☐ Yes ☐ No

e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: _____

3. Do you own any cash, or do you have money in a checking or savings account? *(Include any funds in prison accounts)*
☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: _____

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: _____

Date Authorized Officer of Institution/Title of Officer

NAME _____

PRISON IDENTIFICATION/BOOKING NO. _____

ADDRESS OR PLACE OF CONFINEMENT _____

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FULL NAME (Include name under which you were convicted) _____

Petitioner,

v.

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER _____

Respondent.

CASE NUMBER:

CV _____

To be supplied by the Clerk of the United States District Court

☐ _____ AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY**

28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION _____

PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)

CV _____

CV _____

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
7. When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: *(Check appropriate number)*

This petition concerns:

1. ☐ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue

- a. Place of detention _____
- b. Place of conviction and sentence _____

2. Conviction on which the petition is based *(a separate petition must be filed for each conviction being attacked)*.

- a. Nature of offenses involved *(include all counts)* : _____

- b. Penal or other code section or sections: _____

- c. Case number: _____
- d. Date of conviction: _____
- e. Date of sentence: _____
- f. Length of sentence on each count: _____

- g. Plea *(check one)* :
☐ Not guilty
☐ Guilty
☐ Nolo contendere
- h. Kind of trial *(check one)* :
☐ Jury
☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☐ Yes ☐ No

If so, give the following information for your appeal *(and attach a copy of the Court of Appeal decision if available)*:

- a. Case number: _____
- b. Grounds raised *(list each)* :
 (1) _____
 (2) _____

- (3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☐ Yes ☐ No

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)* :

a. Case number: _____

b. Grounds raised *(list each)* :

- (1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons _____

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

c. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____
_____(7) Was an evidentiary hearing held? ☐ Yes ☐ No7. Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: _____
_____(1) Supporting FACTS: _____

_____(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ Nob. Ground two: _____
_____(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

c. Ground three: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

d. Ground four: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

e. Ground five: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: _____

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☐ No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

(4) Grounds raised *(list each)*:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

12. Are you presently represented by counsel? ☐ Yes ☐ No

If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

Signature of Petitioner

Petitioner

Respondent(s)

**ELECTION REGARDING
CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE**

- A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge may be assigned to rule on dispositive matters only if all parties voluntarily consent.
- Parties are free to withhold consent to magistrate judge jurisdiction without adverse substantive consequences.
- If both parties consent to have a magistrate judge decide the case, any appeal would be made directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
- Unless both parties consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide only non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

Please check the “yes” or “no” box regarding your decision to consent to a United States Magistrate Judge, and sign below.

☐ Yes, I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

☐ No, I do not consent to have a United States Magistrate Judge conduct all further proceedings in this case.

Executed on _____

Date

Signature of Petitioner/Counsel for Petitioner

Petitioner

Respondent(s)

**DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS**

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment? ☐ Yes ☐ No
- b. Rent payments, interest or dividends? ☐ Yes ☐ No
- c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No
- d. Gifts or inheritances? ☐ Yes ☐ No
- e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: _____

3. Do you own any cash, or do you have money in a checking or savings account? *(Include any funds in prison accounts)*
☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: _____

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: _____

Date Authorized Officer of Institution/Title of Officer